

Recording requested by:

Cline and Agee  
a California General Partnershi  
Post Office Box 4227  
Ione, California 95640  
and  
669 Blair Avenue  
Piedmont, California 94611

Recorded in the County of Sacramento  
John Dark, Clerk/Recorder



37.00

199612231237 2:33pm 12/23/96

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R01 11 7.00 30.00 0.00 0.00 0.00 0.00 0.00

When recorded, mail to:

Department of Toxic Substances Control  
Region 1  
10151 Croydon Way, Suite 3  
Sacramento, California 95827  
Attention: James L. Tjosvold

COVENANT  
TO RESTRICT USE OF PROPERTY  
ENVIRONMENTAL RESTRICTION

(Re: Chromalloy American Corporation Site,  
Sacramento, Sacramento County, California)

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This Covenant and Agreement ("Covenant") is made on this 21<sup>st</sup> day of December, 1996, by Cline and Agee, a California general partnership ("Covenantor"), who is the owner of record of certain real property situated in Sacramento, County of Sacramento, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and the California Department of Toxic Substances Control ("DTSC"), with reference to the following facts:

A. The Property contains hazardous substances. The Property was subject to a remedial action requiring excavation and removal of soil contaminated with lead. The remedial action also involved onsite treatment of some soil contaminated with lead.

B. As a result of hazardous waste violations noted during two California Department of Health Services inspections, General Radiator Division of Chromalloy American Corporation (Chromalloy) was ordered to perform hazardous substance release investigations at the Property. During these investigations, DTSC identified

piles of white powder on the Property which contained elevated concentrations of lead. Based on previous manufacturing activities on the Property and the physical characteristics of the white powder, DTSC believes the material was probably lead borate used in the production of conductive coating on glass, pottery and porcelain. Lead and lead Borate are toxic by ingestion and by inhalation. Chronic exposure to lead has been known to cause learning deficits in children.

In 1987 DTSC implemented an Interim Remedial Measure (IRM) to control potential exposure of the public to airborne lead. The IRM included removal of approximately 1,100 cubic yards of white powder and soil. Based on soil sampling conducted after the IRM, it was determined that elevated levels of lead still remained in the soils at the Property. A Final Remedial Action Plan (RAP) was issued by DTSC in October, 1990 which provided for the final cleanup of the Property. Pursuant to the RAP, contaminated soil has been excavated and transported to a hazardous waste disposal facility. Additionally, soil blending and confirmation sampling has been conducted for the purpose of insuring that lead concentrations on the property are at or below 500 parts per million.

C. Pursuant to California Civil Code Section 1471(c), DTSC has determined that this Covenant is reasonably necessary to protect present and future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in the California Health and Safety Code (H&SC) Section 25260.

## ARTICLE I

### GENERAL PROVISIONS

1.01 Restrictions To Run With The Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon the Property and subject to which the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land and shall inure to the benefit of and pass with each and every

portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the California H&SC and run with the land pursuant to Section 25355.5 of the California H&SC and California Civil Code Section 1471. Each and all of the Restrictions are for the benefit of, and enforceable by DTSC and its successor agencies, if any.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to unconditionally agree for and among themselves, their heirs, successors and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants, and that their interests in the Property will be subject to the Restrictions contained herein. Pursuant to California Civil Code Section 1471(b), all successive owners of the land are expressly bound hereby for the benefit of the covenantee(s) herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants, and all purchasers, lessees or possessors shall be deemed to have covenanted, that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of the Property.

## ARTICLE II DEFINITIONS

2.01 DTSC. "DTSC" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regrading, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor; its successors in interest, and their successors in interest, including heirs, and assigns, who at any time hold title to all or any portion of the Property.

### ARTICLE III

#### DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of the Property to commercial or industrial use. The Property shall not be used for other uses, including any of the following:

- a) residences;
- b) hospitals;
- c) schools for persons under 21 years of age;
- d) day care centers for children.

3.02 Conveyance of Property. The Owner or Owners and the Occupants shall provide a thirty (30) day advance notice to DTSC of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. DTSC shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or any interest in it except as otherwise provided by law or by reason of this Covenant.

3.03 Enforcement. Failure of an Owner to comply with any of the requirements, as set forth in Paragraph 3.01, shall be grounds for DTSC, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for DTSC to file civil and criminal action against the Owner as provided by law.

3.04 Notice in Agreements. The Covenantor shall provide a notice to all Owners and Occupants that shall accompany all purchase, lease, sublease, or rental agreements relating to the

Property by supplying a copy of this Agreement. In this way all Owners and Occupants shall be aware of the following statement:

"The land described herein contains hazardous substances. The land was subject to a remedial action requiring excavation and removal of soil contaminated with lead. The remedial action also involved onsite treatment of some soil contaminated with lead. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists on the land."

#### ARTICLE IV

##### VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, subject to the prior written consent of the Owner, any Occupant of the Property may apply to DTSC for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California H&SC.

4.02 Termination. Any Owner or, subject to the prior written consent of the Owner, an Occupant of the Property or a portion thereof may apply to DTSC for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234 of the California H&SC.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V  
MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested:

To "Covenantor":

Jean Cline  
Post Office Box 4227  
Ione, California 95640

James Agee  
669 Blair Avenue  
Piedmont, California 94611

Copy to:

Department of Toxic Substances Control  
Attention: James L. Tjosvold, P.E.  
Chief  
Northern California-Central  
Cleanup Operations Branch  
10151 Croydon Way, Suite 3  
Sacramento, California 95827  
(916) 255-3545  
(916) 255-3697 FAX

5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein are determined to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of this Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by the California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Sacramento within ten (10) days after the date of execution by both parties.

5.06. References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date first set forth above.

Covenantor: Cline and Agee, a California General Partnership

By:

Title:

Date:

Jan M Cline, trustee for  
Cline Revocable Living Trust, partner  
12/19/96

By:

Title:

Date:

James W Agee  
Partner  
12/21/96

DEPARTMENT:

By:

Title:

Date:

James G. Smith  
Chief, Northern Cal - Central Cleanup Operations  
December 9, 1996

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**Schedule C**

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The land referred to herein is described as follows:

All that certain real property situate, lying and being in the County of Sacramento, State of California, described as follows:

Parcel 1 of that certain Parcel Map entitled "A Portion of the Northeast 1/4 of Section 11, T. 7 N., R. 5 E., M.D.M., Sacramento County, California" filed on April 23, 1986, in Book 93 of Parcel Maps at page 17.

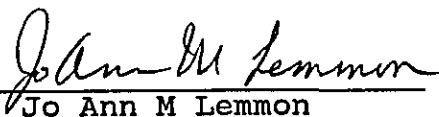
dm/5377



STATE OF CALIFORNIA     )  
                                      ) ss.  
COUNTY OF SAN JOAQUIN )

On December 19, 1996 before me, Jo Ann M Lemmon, Notary Public, personally appeared Jean M. Cline, known to me to be the person whose name is subscribed to, the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal

  
Jo Ann M Lemmon



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

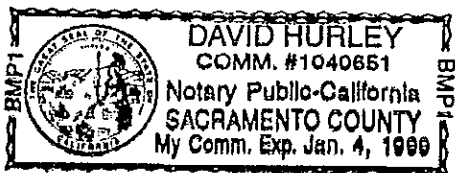
State of CALIFORNIA

County of SACRAMENTO

On 12-9-96 before me, DAVID HURLEY  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JAMES TJASUOLD  
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

David Hurley  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR

☒ OTHER: Chief, Northern California-Central  
 Cleanup Operations Branch

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

Department of Toxic Substances Control  
 Site Mitigation Program

### DESCRIPTION OF ATTACHED DOCUMENT

Deed Restriction  
TITLE OR TYPE OF DOCUMENT

7  
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

# ALL-PURPOSE ACKNOWLEDGMENT

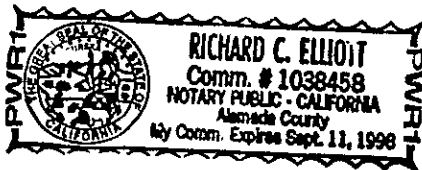
State of CALIFORNIA

County of ALAMEDA

On 12/21/96 before me, RICHARD C. ELLIOTT, NOTARY PUBLIC  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JAMES W. AGEE  
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

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TITLE(S)

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☐ GENERAL

- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

COVENANT TO RESTRICT USE  
OF PROPERTY ENVIRONMENTAL  
RESTRICTION

TITLE OR TYPE OF DOCUMENT

7  
NUMBER OF PAGES

12/21/96  
DATE OF DOCUMENT

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)

SIGNER(S) OTHER THAN NAMED ABOVE